

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DIAMOND STATE PORT CORPORATION,	:
	: Request for Declaratory Statement
AND	:
	: <u>D.S. No. 00-10-294</u>
LOCAL 1694-1, INTERNATIONAL LONGSHOREMEN'S	:
ASSOCIATION, AFL-CIO.	:

Appearances

Jerry M. Cutler, OLR/SPO, for DSPC

John H. Cho, Esq., Freedman & Lorry, for ILA Local 1694-1

The Diamond State Port Corporation (“DSPC”) is a public employer within the meaning of §1302(n) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994).

Local 1694-1 of the International Longshoremen’s Association, AFL-CIO, (“ILA”) is an employee organization within the meaning of 19 Del.C. §1302(h). The ILA represents a bargaining unit of DSPC employees, as modified by the Public Employment Relations Board (“PERB”) in 1996, which includes:

All regular full-time employees of the Diamond State Port Corporation and employees who have worked eight hundred (800) or more actual hours in a calendar year, in cargo handling positions, including related warehousing functions. This unit excludes all office personnel, supervisors, and guards.

Employees who work at least eight hundred (800) actual hours in a calendar year in cargo handling positions but who do not hold permanent, full-time positions, are commonly referred to as “Group B” employees.

On October 25, 2000, DSPC filed a Request for Declaratory Statement concerning the status of Group B employees who met the 800 hour threshold but who were separated from DSPC employment during the following calendar year. Specifically, the petition sought to clarify:

... whether employees who have met the 800 hour threshold may nonetheless be excluded from coverage in the bargaining unit if some event (ex., termination, resignation, etc.) occurs after they have met the threshold but before the beginning of the next calendar year.

The State argues,

... PERB's bargaining unit definition describes the minimum requirements for inclusion in the bargaining unit, but does not guarantee employment to individuals who are discharged or otherwise separated from service with the DSPC.. Moreover, the definition specifically includes only "*employees* who have worked eight hundred (800) or more actual hours ..." An individual who has been separated from service is, by definition, no longer an "employee."

By letter dated November 3, 2000, the ILA did not dispute the factual representations of the State's request. It also agreed that a fair and unbiased resolution of the issue by PERB would be helpful to the parties and would help to avoid future confusion.

OPINION

This request for a declaratory statement meets the requirements of PERB Regulation 6 in that it concerns the scope of the bargaining unit definition issued by PERB and the controversy is between parties whose interests are real and adverse. The parties agree that issuance of a declaratory statement by PERB will facilitate the resolution of an on-going controversy.

A “bargaining unit” is defined as “a group of public employees designated by the Public Employment Relations Board as appropriate for representation by an employee organization for purposes of collective bargaining.” 19 Del.C. §1302(a), *emphasis added*. An “employee” is defined as “one employed by another for wages or salary.” To employ an individual is “to provide [that individual] with a job that pays wages or a salary.” Merriam-Webster’s Collegiate Dictionary, 10th Ed., Merriam-Webster, Inc., 1996. It is axiomatic that an individual who has been discharged or who has resigned ceases, at that time, to be employed and consequently, is no longer an employee.

The PERB has no authority to include anyone in a bargaining unit other than public employees, i.e., persons employed by a Delaware public employer. 19 Del.C. §1301; §1302(a) and (m); §1310. The bargaining unit definition in this case clearly includes only employees, both full-time and employees who worked at least 800 hours in the preceding calendar year.

The parties also recognized this reality in negotiating their collective bargaining agreement. Article 6.6 of the “Chapel [*sic*] B Contract”¹ provides:

Seniority shall be lost in any one (1) of the following ways:

- (a) Discharge for just cause.
- (b) Voluntarily quitting, not due to harassment.
- (c) Failing to report to work (except during layoff) for five (5) consecutive days without prior approval from the Director of Operations.
- (d) Working less than 800 actual hours in any calendar year.

Seniority among Group B employees is the basis for determining daily hires, overtime and eligibility to fill open “Group A” positions.² The question of whether a discharge is

¹ “Agreement between Diamond State Port Corporation and the International Longshoremen’s Association, AFL-CIO, Local 1694-1, A Contract – December 1996 to September 2001, B Contract July 1997 to September 2001.

for “just cause” or whether a resignation is voluntary and “not due to harassment” are issues which are appropriately addressed through the parties’ grievance and arbitration procedures.

DECISION

For the reasons discussed herein, only individuals who are actually employed by the Diamond State Port Corporation are included in the bargaining unit represented by ILA Local 1694-1. This unit does not include any person who has left DSPC employment, either voluntarily or through discharge for just cause.

/s/Deborah L. Murray-Sheppard
DEBORAH L. MURRAY-SHEPPARD
PRINCIPAL ASSISTANT
DELAWARE PERB

DATED: 28 November 2000

² Regular, full-time DSPC employees in cargo handling positions are referred to by the parties as “Group A” employees.